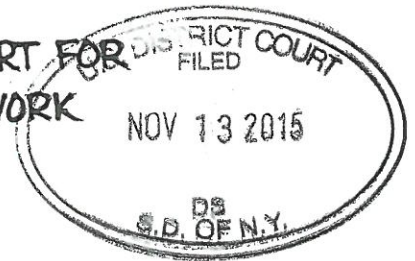


IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK



HECTOR LUIS RODRIGUEZ CARTAGENA,
PROSE MOVANT

CASE No. 11-CR-267 DAB

v.

UNITED STATES OF AMERICA
RESPONDENT'S

NOTICE OF MOTION: Motion For
Reduction of Sentence Pursuant
to 18 U.S.C. § 3582 (c)(2) Amend-
ment 782; Memorandum of Points
and Authorities

NOW COMES, Hector Luis Rodriguez Cartagena, Prose Movant moves this Honorable Court Pursuant to 18 U.S.C. § 3582 (c)(2) Amendment 782 for reduction of sentence from **120 months** to the level required in the new Smarter Sentencing Act triggering the Fair Sentencing Act Bill #S. 1695 (2013) triggering the Fair Sentencing Act of 2010 (S. 1789) retroactively applicable Pursuant to Authority U.S.S.C § 3553 (A), § 2D1.1 AND § 5D1.14

The Movant humbly request of this Honorable Court to appoint counsel to review said filings Pursuant to the Criminal Justice Act of 1964, 18 U.S.C. § 3006 (A)(g)

INTRODUCTION

On October 31, 2011, The United States District Court For The District Of New York (SOUTHERN), Honorable Judge Batts sentenced Movant to 120 months imprisonment AND 5 years supervision for "Conspiracy to Distribute and Poss. Wit. Int. Delivery of Cocaine contrary to title 21 U.S.C. § 841, in violation of United

States Code Section § 846

The sentence was imposed under the Sentencing Guidelines, with a base offense level computed under § 2D1.1, which by way of guideline 2D1.1 provides a base offense level of 29

ARGUMENT

Movant's offense level should be reduced from 108 to 135 and the guideline range reduced from 120 months to guideline range 87 to 108 based on the Amendment to § 2D1.1

18 U.S.C. § 3582 (c)(2) provides as follows:

IN THE CASE OF A DEFENDANT WHO HAS BEEN SENTENCED TO A TERM OF IMPRISONMENT BASED ON A SENTENCING RANGE THAT HAS SUBSEQUENTLY BEEN LOWERED BY THE SENTENCING COMMISSION PURSUANT TO 28 U.S.C. § 994 (c), UPON **MOTION OF THE DEFENDANT...**

THE COURT MAY REDUCE THE TERM OF IMPRISONMENT, **AFTER** CONSIDERING THE FACTORS SET FORTH IN SECTION 3553 (a) TO THE EXTENT THAT THEY ARE APPLICABLE, IF SUCH A REDUCTION IS CONSISTENT WITH APPLICABLE POLICY STATEMENT ISSUED BY THE SENTENCING COMMISSION.

Section 1B1.10 is the guideline policy statement which implements 18 U.S.C. § 3582 (c)(2). Subsection (c) of that policy statement lists amendments which is listed in Amendment 711. At the time of Movant's original sentence, the Courts were not required to treat the guidelines as mandatory. The Supreme Court has held the guidelines in their mandatory form are unconstitutional and through serving 18 U.S.C. § 3553 (b) made them **"EFFECTIVELY ADVISORY"**. **BOOKER**, 543 U.S. at _____. **BOOKER** AND SUBSEQUENT

SUPREME COURT CASES CLARIFYING IN - NAMELY **RITA v. UNITED STATES**, *supra*; **GALL v. UNITED STATES**, *supra*; AND **KIMBROUGH v. UNITED STATES**, *supra* - HAVE CREATED A BRAVE NEW WORLD, IN WHICH THE GUIDELINES ARE BUT ONE OF SEVERAL FACTORS TO BE CONSIDERED UNDER § 3553 (a). WHAT THE SUPREME COURT HAS DESCRIBED AS THE "**OVERARCHING PROVISION**" IN § 3553 (a) IS THE REQUIREMENT THAT COURTS "IMPOSE A SENTENCE SUFFICIENT, BUT NOT GREATER THAN NECESSARY TO ACCOMPLISH THE GOALS OF SENTENCING." **KIMBROUGH**, 128 S.Ct. at 570

DISCUSSION AND CONSIDERATION OF 18 U.S.C. § 3553 (a) FACTORS

Title 18 U.S.C. § 3553 (a) factors to be CONSIDERED IN IMPOSING A SENTENCE, ARTICULATES THAT THE COURT SHALL IMPOSE A SENTENCE SUFFICIENT, BUT NOT GREATER THAN NECESSARY TO COMPLY WITH THE PURPOSE SET FORTH IN PARAGRAPH (2) OF THIS SUBSECTION. THE COURT SUGGESTED THAT POLICY DISAGREEMENT IN THIS AREA WAS EVEN MORE DEFENSIBLE THAN IN OTHER AREAS. IT NOTED THAT IN ORDINARY CASE, THE COMMISSION'S RECOMMENDATION OF A SENTENCE WILL REFLECT A ROUGH APPROXIMATION OF SENTENCES THAT MIGHT ACHIEVE § 3553 (a)'S OBJECTIVES, *id.* at 574 (QUOTING **RITA**, 127 S.Ct. at 2465), AND SO CLOSER REVIEW MAY BE IN ORDER WHEN THE SENTENCING JUDGE VARIES FROM THE GUIDELINES, BASED SOLEY ON THE JUDGES VIEW THAT THE GUIDELINE RANGE "**FAILS PROPERLY TO REFLECT § 3553 (a) CONSIDERATIONS EVEN IN A MINE-RUN CASE**".

THESE CONCERNS ARE PARTIALLY ASSUAGED BY THE RECENT AMENDMENT REDUCING OFFENSE LEVELS, MOREOVER. THIS ALSO WAS RECOGNIZED BY THE SUPREME COURT IN **KIMBROUGH**;

KIMBROUGH, 128 S.Ct. at 569 (quoting 2007 Sentencing Commission report, *supra* pp. 3-4 at 10). Kimbrough's rationale for varying from the guidelines therefore remains even after.

HISTORY AND CHARACTERISTICS OF MOVANT

The Movant, Prose respectfully **MOVES** this Honorable Court to consider that the Supreme Court has held the guidelines in their mandatory form are unconstitutional and through serving 18 U.S.C. § 3553(a) and made them "**ADVISORY**" and all factors enumerated in 18 U.S.C. § 3553(a) and impose a sentence sufficient but not greater than necessary to provide just punishment for the Movant based upon Sentencing Commission Amendment 782 and based upon the circumstances surrounding the Movant's case.

Moreover, Movant prays that this Honorable Court will consider that having now been incarcerated for approx. 57 months on a 120 month prison term and now at the age of 33 years old, I have had more than a ample amount of time to re-evaluate my life, contemplate and strategically change my cognitive dissonance because I am far from being a dullard individual and I have no room for faux-pas in my life.

Therefore, I am highly confident that dealing drugs will never again become apart of my life. Section § 3582 (c)(2) requires that the District Court to consider the factors enumerated in § 3553 (a) in determining whether modification of previously imposed sentence is warranted. **DILLION v. UNITED**

STATES, *supra*. EDUCATIONAL CLASSES while in FEDERAL custody. I, MOVANT HAVE BEEN IN COMPLETE COMPLIANCE WITH FACTOR'S TO BE CONSIDERED WHEN IMPOSING SENTENCE UNDER § 3553 (a)(2)(D), the MOVANT HAS COMPLETED AND RECEIVED CERTIFICATES OF COMPLETION FOR THE FOLLOWING:

1. RECEIVED **GED**
2. CURRENTLY **EDUCATION TUTOR**
3. ELECTRIC FOR HOMEOWNERS
4. INTRO TO THE NATIONAL ELECTRIC CODE
5. COMPUTER SKILLS VT
6. **ET AL**

I WAS RAISED IN THE CONCRETE JUNGLE ON THE STREETS OF PATTERSON, NEW JERSEY SURROUNDED BY DRUG ABUSE, POVERTY, NEGLECT AND NO MALES THAT PROVIDED POSITIVE EXAMPLES IN MY LIFE. LOOKING BACK, IT MAY HAVE BEEN INEVITABLE, THAT I WOULD FOLLOW THE PATH OF MY PEERS.

MY YOUNG ADULT LIFE WAS SPENT GROWING UP IN NEIGHBORHOODS WHERE IT IS COMMON FOR MEN TO SUPPORT THEMSELVES AS WELL AS THEIR FAMILIES BY DEALING DRUGS. SUCH MEN WERE MY ONLY MENTORS AND ROLE MODELS

NONE OF THIS IS TO BE MISCONSTRUED AS AN EXCUSE BECAUSE AT THE END OF IT ALL, I AM THE SOLE CONTROLLER OF MY OWN DESTINY AND EXCEPT FULL RESPONSIBILITY OF MY OWN ACTIONS.

I AM NO LONGER THAT YOUNG TROUBLED MAN WITHOUT CAUSE NOR DIRECTION BEFORE COMING INTO THE FEDERAL SYSTEM. I HAVE COMMITTED MYSELF INTO CARVING A POSITIVE PATH FOR MYSELF TO BECOME A PRODUCTIVE MEMBER IN PRISON AS WELL AS UPON MY

RELEASE BACK INTO SOCIETY, SO THAT MY FAMILY MEMBERS MAY BE PROUD OF ME AS MUCH AS I AM OF MYSELF

I KNEW THAT LIFE WITHOUT DRUGS, WHETHER IT BE DEALING OR USING, IT IS POSSIBLE. I REALIZE THE SERIOUSNESS OF MY CRIMINAL BEHAVIOR. IT WASN'T A LIFE STYLE, BUT A BEHAVIOR WITH REAL VICTIMS (TO INCLUDE MY FAMILY AS WELL AS MYSELF) AND DIRE CONSEQUENCES.

THE MOVANT'S TERM OF IMPRISONMENT HAS AFFORDED ME THE OPPORTUNITY TO SUSTAIN AN ABSTINENCE FROM AN ADDICTIVE FACADE OF A LIFE STYLE AND I HAVE USED THIS TIME POSITIVELY. THE NEED FOR THE SENTENCED PURSUANT TO § 3553 (3)(2) FACTORS HAS BEEN ACCOMPLISHED, AND THE MOVANT DOES NOT ATTEMPT TO DIMINISH THE SIGNIFICANCE OF HIS CURRENT NOR PRIOR OFFENSES.

CONCLUSION

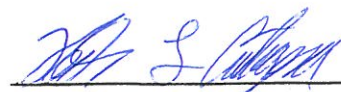
HAVING ESTABLISHED AND DETERMINED THAT THE MOVANT'S CASE DEMONSTRATES THE NEED FOR THE SENTENCE REDUCTION HAS BEEN SATISFIED, THE MOVANT HUMBLY REQUESTS OF THIS HONORABLE COURT TO EXERCISE ITS DISCRETION IN A DECISION AS TO WHETHER THE MOVANT DESERVES A TWO BASE OFFENSE LEVEL REDUCTION.

MOVANT HAS SERVED **47.4 %** OF HIS TERM AS OF THE DATE OF THIS MOTION AND PRAYS THAT THIS HONORABLE COURT WILL MERCIFULLY **GRANT** THIS MOTION FOR REDUCTION OF SENTENCE.

THE MOVANT FURTHER SAYETH NAUGHT..

Respectfully Submitted

DATE: November 6, 2015

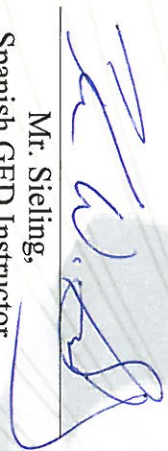


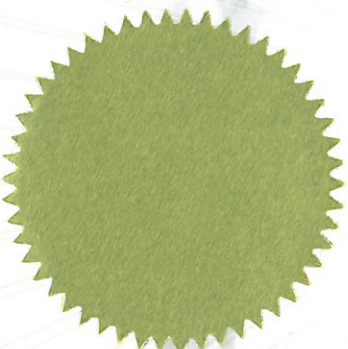
Certificate of Appreciation

Awarded to:

Hector Cartagena

In appreciation of all the hard work you have done to make the Spanish GED class run more efficiently.


Mr. Sieling,
Spanish GED Instructor



November , 2015

* FTDS7 * INMATE EDUCATION DATA * 09-15-2015
 PAGE 001 OF 001 * TRANSCRIPT * 09:43:22

REGISTER NO: 64445-054 NAME.: CARTAGENA RODRIGUEZ FUNC: PRT
 FORMAT.....: TRANSCRIPT RSP OF: FTD-FORT DIX FCI

----- EDUCATION INFORMATION -----

FACL	ASSIGNMENT DESCRIPTION	START DATE/TIME	STOP DATE/TIME
FTD ESL HAS	ENGLISH PROFICIENT	06-27-2012 1348	CURRENT
FTD GED EARNED	GED EARNED IN BOP	01-02-2015 0800	CURRENT

----- EDUCATION COURSES -----

SUB-FACL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
FTD GP	COMPUTER SKILLS VT12:30-2:00PM	01-06-2015	05-26-2015	P	C	M	120
FTD GP	GED W SPAN RM240 M-F 0900-1030	07-18-2013	01-02-2015	P	C	P	936
FTD GP	GED W SPAN RM240 M-F 0730-0900	07-02-2012	07-18-2013	C	W	I	0
FTD GP	INTRO TO THE NATL ELEC CODE	04-09-2012	07-02-2012	P	C	P	24
FTD GP	ELECTRIC FOR HOMEOWNERS	04-09-2012	07-02-2012	P	C	P	24
FTD GP	BASIC ALGEBRA	04-09-2012	07-02-2012	P	C	P	24

----- HIGH TEST SCORES -----

TEST	SUBTEST	SCORE	TEST DATE	TEST FACL	FORM	STATE
GED	AVERAGE	454.0	12-18-2014	FTD	PASS	DC
	LIT/ARTS	500.0	08-21-2014	FTD	ID	MS
	MATH	410.0	12-18-2014	FTD	IA	DC
	SCIENCE	430.0	12-18-2014	FTD	IA	DC
	SOC STUDY	470.0	12-18-2014	FTD	IA	DC
	WRITING	460.0	08-21-2014	FTD	ID	MS
GED PRAC	AVERAGE	408.0	10-17-2014	FTD	FAIL	
	LIT/ARTS	500.0	07-12-2013	FTD	PE	
	MATH	390.0	04-09-2014	FTD	PA	
	SCIENCE	480.0	08-08-2014	FTD	PE	
	SOC STUDY	470.0	07-15-2014	FTD	PD	
	WRITING	460.0	04-09-2014	FTD	PA	
SABE/2	MATH COMP	2.4	01-25-2012	FTD		
	MATH CONC	3.1	01-25-2012	FTD		
	READ COMP	4.3	01-25-2012	FTD		
	VOCABULARY	6.6	01-25-2012	FTD		

G0000 TRANSACTION SUCCESSFULLY COMPLETED

FTDS7 * INMATE EDUCATION DATA * 09-15-2015
 PAGE 001 OF 001 * PROGRAM REVIEW / WITHDRAWAL INTERVIEW * 09:45:16

REGISTER NO: 64445-054 NAME.: CARTAGENA RODRIGUEZ FUNC: PRT
 FORMAT.....: REVIEW RSP OF: FTD-FORT DIX FCI

----- LITERACY PROGRAM -----

01-02-2015 /WITHDRAWAL /SYI/FTD /FTD
 REAS: OTHER (PASSED GED/STATE OF DC/FORM IA)
 PROG: EXCELLENT (TOTAL SCORE=2270/AVG SCORE=454)
 REEN: OTHER (NOT NECESSARY = GED EARNED)
 12-18-2014 /REVIEW /SYI/FTD /FTD
 TYPE: OTHER (OFFICIAL GED TESTED; WAITING)
 (FOR TEST RESULTS)
 08-27-2014 /REVIEW /SYI/FTD /FTD
 TYPE: OTHER (RCVD OFF GED TEST RESULTS-NON)
 (PASS;NDS WRK ON MATH/AVG)
 06-23-2014 /REVIEW /KS/FTD /FTD
 TYPE: OTHER (HAS EARNED 720 HRS. PRGRSS AND)
 (EFFORT GOOD REC. EP)
 05-08-2014 /REVIEW /SYI/FTD /FTD
 TYPE: OTHER (RCVD OFF GED TEST SCORE-NOPASS)
 (ND WRK ON WRITE/MATH/AVG SCORE)
 04-30-2014 /REVIEW /SYI/FTD /FTD
 TYPE: OTHER (OFFICIAL GED TESTED- SPAN;)
 (WAITING FOR TEST RESULTS)
 11-23-2013 /REVIEW /KS/FTD /FTD
 TYPE: 480 HOURS (HAS EARNED 480 HRS. PRGRSS AND)
 (EFFORT GOOD REC. EP)
 03-26-2013 /REVIEW /FTD/NDG /FTD
 TYPE: OTHER (SIGNED CODE/CONDUCT)
 03-21-2013 /REVIEW /FTD/NDG /FTD
 TYPE: 240 HOURS (240 HOURS IN LITERACY/ GED SAT)
 02-01-2013 /REVIEW /FTD-MM /FTD
 TYPE: OTHER (IM UA FROM 0730 CLS/COUNSELD)
 12-21-2012 /REVIEW /SYI/FTD /FTD
 TYPE: OTHER (DID NOT WANT TO TAKE PRACTICE)
 (GED TEST)
 07-03-2012 /REVIEW /FTD-OG /FTD
 TYPE: OTHER (ASSIGNED TO SPANISH GED)
 (COUNSELD ON RULES)
 02-28-2012 /REVIEW /SYI/FTD /FTD
 TYPE: INITIAL (ESL NEED/GED EN-RECOMMEND ESL,)
 (SGED,VT,REC,HEALTH & WELLNESS)
 01-27-2012 /REVIEW /JMT/FTD /FTD
 TYPE: OTHER (ENROLL IN ESL FIRST, THEN GED.)
 12-30-2011 /REVIEW /JMT/FTD /FTD
 TYPE: OTHER (PSI STATES W/DREW 5TH GRADE)

----- ESL PROGRAM -----

06-27-2012 /REVIEW /FTD-MM /FTD
 TYPE: OTHER (PER INTERVIEW, FLUENT IN ENGLI)
 (SH= ESL HAS)

G0000 TRANSACTION SUCCESSFULLY COMPLETED



Director Luis L. Aragona

Federal Correctional Institution

Building 5802

P.O. Box 2000

Fort Dix, NJ 08640

Daniel Patrick Mornihan
United States District Court
500 Pearl Street, Room 120
New York, NY 10007-1312

Attention: Clerk of Courts